No. 97-1526

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

KOICHI MATSUMOTO, *et al.*,

Petitioners,

vs.

JAMES R. GOTCHER, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division One

BRIEF IN OPPOSITION FOR RESPONDENTS SPECIALLY APPEARING DEFENDANTS COUDERT BROTHERS, THE INDIVIDUAL PARTNERS OF COUDERT BROTHERS, BARRYE L. WALL AND RONALD W. BUCKLY

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PARTIES TO THE PROCEEDING

The Petition accurately lists the parties to the proceeding.

TABLE OF CONTENTS

Page

Parties to the Proceeding i

Table of Contents ii

Table of Citations iii

Statement of the Case 1

Reasons for Denying the Writ 3

I. The Petition Raises No Federal Or Constitutional Questions. 3

II. Petitioners Are Solely Responsible For Their Failure To Comply With California's Rules Of Court And Court Orders. 4

III. Petitioners Cannot Validly Claim That Their Appeals Were Dismissed For Unknown Reasons. 5

IV. Petitioners' Rights Are Not Affected By Respondents' Use Of The Term "The Individual Partners Of Coudert Brothers" To Identify Parties In This Litigation. 6

V. Petitioners Make Several Other Inaccurate Factual Assertions. 7

A. Petitioners Falsely Contend That the Underlying Lawsuit Was a "Class Action." 7

Contents

Page

B. Petitioners Falsely Claim That The Trial Judge Repeatedly Denied Appearances Of Petitioners' Attorneys And Refused To Recuse Himself After Having Been Disqualified. 7

C. Petitioners Falsely Claim That Non-Party Yuki Kobayashi Is And Was A Class Member And Unnamed Plaintiff In This Class Action In Trial Court. 8

D. Inexplicably, Petitioners Contend That All Delays In Preparing The Record On Appeal Were Caused By The Trial Court Not By The Petitioners. 8

E. Petitioners Never Timely Complied With Their Deadlines. 9

Conclusion 9

TABLE OF CITATIONS

Cases Cited:

Funeral Directors Association v. Board of Funeral Directors, 22 Cal. 2d 104 (1943) 4

People v. Brown, 149 Cal. App. 2d 175 (1957) 4

Contents

Page

United States Constitution Cited:

Fifth Amendment 6

Fourteenth Amendment 6

Other Authority Cited:

California Constitution, Article IV 4

STATEMENT OF THE CASE

This Petition for Writ of Certiorari arises out of Petitioners' multiple failures, spanning nearly one year, to perfect the appellate record. After filing on October 4, 1996 a Notice of Appeal from certain rulings by the California Superior Court dismissing this matter against Respondents for failure to properly serve process, Petitioners proceeded to miss all deadlines by which to perfect the appellate record set by the California Rules of Court, the Superior Court Clerk, and the California Court of Appeal. Finally, on September 10, 1997, the Court of Appeal dismissed Petitioners' October 4, 1996 appeal based on those failures and on December 10, 1997 the California Supreme Court denied review of the Court of Appeal's dismissal.

The complaint in this professional negligence lawsuit was first filed in January 1993 by Plaintiffs Koichi Matsumoto and Harumi Shokawa. However, nothing happened in the case until the end of 1995, when invalid attempts to serve Respondents were made. Respondents successfully moved the Superior Court to quash those attempts and the Superior Court denied Petitioners' numerous and frequent motions to reconsider those rulings, the orders dismissing the defendants who had been served, and the judgments dismissing this action.

Petitioners then sought appellate review of these decisions, filing Notices of Appeal on October 4, 1996, November 12, 1996 and January 27, 1997. On appeal, however, Petitioners failed to properly designate the record and to perfect that designation in case numbers B107490 and B109625 despite having received numerous opportunities to do so and extensive instruction from the Superior Court Clerk as to how to do so. Petitioners then unsuccessfully moved the Court of Appeal for relief from that burden and for criminal and civil sanctions against the Clerk based on the Clerk's alleged "bad faith" and

"incompetent" conduct. On July 16, 1997 the Court of Appeal ordered that

> each appellant has 10 days from the date of this order to re-designate the record on appeal and perfect the designation in case numbers B107490 and B109625. All other requests are denied.

Petitioners failed to comply with the Court of Appeal's Order. Based on that failure, Respondents Gotcher, Murata and Tomita moved the Court of Appeal for an order dismissing the October 4, 1996 appeal in which these Respondents joined. By its September 10 and 16, 1997 orders, the Court of Appeal granted that motion.[1] (Petition at 1A.) These Respondents then moved the Court of Appeal for an order dismissing Petitioners' November 12, 1996 and January 27, 1997 appeals based on Petitioners' same failures. By its December 18, 1997 Order, the Court of Appeal dismissed Petitioners' remaining appeals. Petitioners then unsuccessfully moved the Court of Appeal to reconsider its rulings and moved to disqualify based on alleged incompetence and bias of the appellate judges who had dismissed their appeals.

Petitioners next asked the California Supreme Court for review of the Court of Appeal's dismissals of their October 4, 1996, November 12, 1996 and January 27, 1997 appeals.

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1. The September 10, 1997 Order also inadvertently dismissed the November 12, 1996 appeal even though that appeal had not been the subject of the Motion to Dismiss. The Court's September 16, 1997 Order amended the September 10, 1997 Order to dismiss the October 4, 1997 appeal only. On September 29, 1997, Respondents, the Specially Appearing Parties, moved to dismiss the two remaining appeals, dated November 12, 1996 and January 27, 1997. On March 11, 1998, the Court of Appeal granted the Specially Appearing Parties' motion to dismiss those remaining appeals.

Plaintiffs' Petitions for Review were denied on December 10, 1997 (Petition at 2A.) and March 11, 1998. After Plaintiff's Petitions for Review before the California Supreme Court were denied, the Court of Appeal issued Remittitur Notices stating that Orders dismissing the October 4, 1996, November 12, 1996 and January 27, 1997 appeals were final and awarding Respondents costs.

The Court of Appeal's rulings were entirely justified. The law clearly states that it is the appellant's burden to timely perfect the record on appeal. Here, Petitioners, by their own failures, did not carry that burden despite receiving numerous notices from the Superior Court Clerk informing Petitioners what they needed to do to perfect the record and numerous extended deadlines to do so from the Clerk and from the Court of Appeal. Under well-settled and constitutionally valid California law, Petitioners are responsible for the consequences of their failure to perfect their appeal.

Try as they might, Petitioners cannot convert their simple, continuous failure to timely perfect the record on appeal into an issue that deserves further consideration by this, or any other Court. Their Petition for a Writ of Certiorari should be denied.

REASONS FOR DENYING THE WRIT

I.

THE PETITION RAISES NO FEDERAL OR CONSTITUTIONAL QUESTIONS.

As is evidenced by the Statement of the Case, this Petition does not raise any federal questions or constitutional issues. Petitioners' grievances concerning the dismissal of their appeals are based solely on their simple and continual failure to comply

with California statutes, Rules of Court, and finally, court rulings and orders. Contrary to Petitioners' unsupported assertions, it is long settled that the California Court of Appeal is not required to have a concurrence of two judges or to provide a written opinion when issuing an order dismissing an appeal. *People v. Brown*, 149 Cal. App. 2d 175, 176 (1957); *Funeral Directors Association v. Board of Funeral Directors*, 22 Cal. 2d 104 (1943). (Article IV of the California Constitution, which requires the Court of Appeal to provide a written opinion, does not apply to an order dismissing an appeal). Petitioners' appeals were thus dealt with according to clear-cut California law.

Again, Petitioners were provided several opportunities to comply with the California rules of court and the rulings of the Court of Appeal and Superior Court. Failing to so comply, Petitioners were then provided with an opportunity to explain their failures in their oppositions to Respondents' motions to dismiss and in Petitioners' motions for reconsideration. Despite these opportunities, Petitioners failed to present any justification for their failure to comply with the applicable rules of court and court orders. Instead, they shamelessly blamed their failures on court clerks, opposing counsel, and on the alleged bias of California superior court and appellate judges. Petitioners simply do not show how on this record they were denied due process.

II.

PETITIONERS ARE SOLELY RESPONSIBLE FOR THEIR FAILURE TO COMPLY WITH CALIFORNIA'S RULES OF COURT AND COURT ORDERS.

Petitioners argue that the decisions of the state courts were erroneous in that petitioners diligently tried to comply with rules of court and court orders. This argument is not reflected

by the factual record in this matter. In fact the factual record demonstrates exactly the opposite. As shown above in the Statement of the Case, Petitioners were solely responsible for their failures to comply with California Rules of Court and court orders and were not at all diligent in their attempts to comply with those rules of court and court orders. Their excuses below — that the Superior Court Clerk was incompetent and biased and that the Court of Appeal judges were incompetent and biased — were outrageous and nonsensical.

III.

PETITIONERS CANNOT VALIDLY CLAIM THAT THEIR APPEALS WERE DISMISSED FOR UNKNOWN REASONS.

As set forth repeatedly above, Petitioners' appeals were dismissed due to their continuous failure to comply with the California Rules of Court and rulings of the Superior Court and Court of Appeal. Petitioners were told by the Superior Court Clerk and the Court of Appeal what they had to do to perfect the appeals and were given several opportunities to correct their mistakes, but inexcusably failed to do so. As a result of Petitioners' failure to designate the record on appeal and perfect the designation within the prescribed time period, Respondents moved the Court of Appeal to dismiss the appeals and on that basis, Respondents' motions to dismiss were granted. In light of the Court of Appeal's specific instructions concerning Petitioners' deadlines to properly designate and perfect the record on appeal and Respondents' motions specifically naming those failures as the sole bases for their motions to dismiss, Petitioners cannot validly claim that they are not aware of the reasons underlying the dismissals of their appeals.

IV.

PETITIONERS' RIGHTS ARE NOT AFFECTED BY RESPONDENTS' USE OF THE TERM "THE INDIVIDUAL PARTNERS OF COUDERT BROTHERS" TO IDENTIFY PARTIES IN THIS LITIGATION.

Petitioners inexplicably claim that they have been denied due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution because Respondents have included "the Individual Partners of Coudert Brothers" without identifying individual names. Petitioners further claim that "the Individual Partners of Coudert Brothers" is not a proper party to move for dismissal because the failure to name the individual moving partners created uncertainty.

Petitioners are wrong. Petitioners cannot seriously claim that they are unable to identify the individuals who they themselves sought to name as parties to this action in Exhibit A to their Complaint. In addition, these Respondents, in several motions and opposition briefs filed in the California state court, listed the names of the individual partners at issue. Respondents' occasional use of the term "the Individual Partners of Coudert Brothers" in lieu of specific names — as opposed to naming every person over and over again — was merely used in the interest of judicial economy and the conservation of paper and was not in any way intended to, and as shown above did not in any way, conceal the identity of any individuals.

More importantly, the identification of the names of the parties is irrelevant. Petitioners' case and appeals were dismissed because of their failure to comply with California law and court orders. The identities of the individual partners — about which, as shown above, Petitioners were clearly aware — has nothing to do with those issues.

V.

PETITIONERS MAKE SEVERAL OTHER INACCURATE FACTUAL ASSERTIONS.

A. Petitioners Falsely Contend That the Underlying Lawsuit Was a "Class Action."

No class action was ever certified in this matter and Petitioners know that.

B. Petitioners Falsely Claim That The Trial Judge Repeatedly Denied Appearances Of Petitioners' Attorneys And Refused To Recuse Himself After Having Been Disqualified.

Petitioners' allegations here are, quite simply, lies. The record indicates that the trial court never denied the appearance of an attorney for any party in this litigation. The trial court, however, did on occasion deny Yuki Kobayashi permission to appear because he was neither a party to the litigation nor was he a licensed attorney appearing on behalf of anyone. Even then, the Court was more than patient with Mr. Kobayashi and only did so after Mr. Kobayashi on several occasions had gone berserk in Court, once even comparing Judge Lachs to Adolf Hitler.

In addition, California Superior Court Judge Lachs was never disqualified in this action. Although Petitioners moved to disqualify Judge Lachs because they did not agree with his rulings — which was simply part of Petitioners' pattern of blaming Judges and other court personnel for any decisions that have not been in their favor — that motion was denied and Judge Lachs was not disqualified.

C. Petitioners Falsely Claim That Non-Party Yuki Kobayashi Is And Was A Class Member And Unnamed Plaintiff In This Class Action In Trial Court.

Petitioners' contention that Yuki Kobayashi is a class member and an unnamed plaintiff in this lawsuit is, again, a lie. Instead, his filings in the Court of Appeal state that he is the president of a non-profit corporation and is driving this case as a "service to society." He is, quite simply, a vexatious interloper.

As has been discussed previously, no class was ever certified in this litigation. Furthermore, at no point during this litigation has any Judge determined that Yuki Kobayashi was a party in this litigation. To the contrary, Superior Court Judge Lachs explicitly found that Yuki Kobayashi was neither a party to this lawsuit nor an attorney representing a party to this lawsuit. Further, Mr. Kobayashi was never a client of Coudert Brothers and therefore could not have suffered any of the alleged harm listed in the Complaint. Mr. Kobayashi moved to join the case as a plaintiff, but — not surprisingly given the fact that he never had the remotest connection to the facts of this case — his motion was denied.

D. Inexplicably, Petitioners Contend That All Delays In Preparing The Record On Appeal Were Caused By The Trial Court Not By The Petitioners.

As described in detail above, Petitioners have falsely contended that all delays in preparing the record on appeal were caused by the trial court. Although inaccurate, this contention is consistent with Petitioners' misguided and consistent pattern of blaming everybody but themselves for the mistakes they made during the course of this litigation. At various times, Petitioners have sought to disqualify trial court Judge Lachs and appellate Judges Spencer and Vogel, and to have court personnel,

including a Superior Court Clerk, criminally and civilly sanctioned. As described above, Petitioners — and no one else — are responsible for the dismissal of their case.

E. Petitioners Never Timely Complied With Their Deadlines.

Petitioners' contention that they are not in default of, and have in fact complied with, their deadlines is simply untrue. As set forth above, Petitioners failed to comply with the Court of Appeal's July 16, 1997 Order. Pursuant to that Order, Petitioners were required to designate the record on appeal and perfect the designation within 10 days. Inexplicably, however, they did not do so.

CONCLUSION

For the reasons set forth above, the Petition should be denied.

Respectfully submitted,

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